

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LARRY F. WILSON,

Defendant Below-
Appellant,

v.

STATE OF DELAWARE,

Plaintiff Below-
Appellee.

§

§ No. 168, 2012

§

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§ Court Below—Superior Court

§ of the State of Delaware

§ in and for Sussex County

§ Cr. ID No. 0905016390

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Submitted: June 1, 2012

Decided: June 19, 2012

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices

ORDER

This 19th day of June 2012, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Larry F. Wilson, filed an appeal from the Superior Court's March 5, 2012 order denying his fourth motion for correction of illegal sentence pursuant to Superior Court Criminal Rule 35(a). The plaintiff-appellee, the State of Delaware, has moved to affirm the

Superior Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.¹ We agree and affirm.

(2) The record before us reflects that, in August 2009, Wilson entered a no contest plea to the charges of Possession of a Deadly Weapon By a Person Prohibited ("PDWPP") and Carrying a Concealed Deadly Weapon ("CCDW"). The State dismissed 5 additional charges. Wilson was sentenced as a habitual offender on the CCDW conviction to 91 days of Level V incarceration, with credit for 91 days previously served, and to 8 years at Level V, to be suspended for 18 months at Level III probation, on the PDWPP conviction.

(3) On April 1, 2010, Wilson was found to have committed a violation of probation ("VOP"). He was sentenced on the PDWPP conviction to 8 years at Level V, with credit for 9 days served, to be suspended for 1 year at Level IV Home Confinement followed by 1 year at Level III. On May 12, 2010, Wilson's VOP sentence was modified so that he could serve his Level IV sentence either on Work Release or Home Confinement. On December 3, 2010, Wilson's VOP sentence on the PDWPP conviction was modified a second time. He was sentenced to 7

¹ Supr. Ct. R. 25(a). Wilson also filed a motion to expedite on May 18, 2012, to which the State has filed a response. In the motion, Wilson argues that, if his appeal is not decided on an expedited basis, he is at risk of serving more Level V time than his sentence requires.

years and 6 months at Level V, to be suspended for 18 months at Level III. The VOP sentencing order reflects that the reduction of Wilson's VOP sentence from 8 to 7 years and 6 months took into account all of the Level V time he had served up to that point.

(4) On March 8, 2011, Wilson again was found to have committed a VOP. On the PDWPP conviction, he was sentenced to 7 years and 6 months at Level V, with credit for 23 days previously served, to be suspended for 90 days at Level IV Work Release, to be followed by 18 months at Level II probation. On September 22, 2011, Wilson was found to have committed a third VOP regarding his PDWPP conviction. On November 11, 2011, he was sentenced on PDWPP conviction to 7 years at Level V, to be suspended after 1 year for 18 months at Level III and then Level II. The VOP sentencing order notes that the sentence takes into consideration all Level V time Wilson had previously served.

(5) Between November 2011 and February 2012, Wilson filed four motions in the Superior Court requesting that his VOP sentencing order be modified. The Superior Court denied all four motions on the ground that Wilson's sentencing orders had credited him with all the Level V time to which he was entitled.

(6) In his appeal from the Superior Court's denial of his fourth motion for correction of sentence, Wilson claims that, while his sentence is not "illegal," the effective date of the sentence should be changed from November 10, 2011 to September 8, 2011, so as to properly reflect the amount of Level V time he has left to serve on his sentence.

(7) Once a defendant commits a VOP, the Superior Court has the authority to require him to serve the sentence originally imposed, or any lesser sentence,² as long as the defendant is given credit for all Level V time previously served on that sentence and the sentence does not exceed the Level V term that a prior sentence left suspended.³

(8) The record reflects that the Superior Court subtracted 6 months from Wilson's suspended Level V sentence on its most recent VOP sentencing order to account for Level V time he had previously served. This is in excess of the time to which Wilson appears to claim he is entitled. We have reviewed this matter carefully and conclude that Wilson has not carried his burden of demonstrating that the Superior Court failed to account for all of the Level V time to which he is entitled. As such, we conclude that the Superior Court's judgment must be affirmed.

² *State v. Sloman*, 886 A.2d 1257, 1260 (Del. 2005); Del. Code Ann. tit. 11, §4334(c).

³ *Gamble v. State*, 728 A.2d 1171, 1172 (Del. 1999).

(9) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.⁴

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

⁴ Wilson's motion to expedite is hereby denied as moot.